

ALEXANDRIA  
BLACKSBURG  
CHARLOTTESVILLE  
NORFOLK  
RICHMOND  
ROANOKE  
WASHINGTON, D.C.

**LECLAIR RYAN**  
A PROFESSIONAL CORPORATION  
ATTORNEYS AT LAW  
INNSBROOK CORPORATE CENTER  
4201 DOMINION BOULEVARD, SUITE 201  
GLEN ALLEN, VIRGINIA 23060  
TELEPHONE: (804) 270-0070  
FACSIMILE: (804) 270-4715

**JOHN A. PIRKO**  
DIRECT DIAL: 804.968.2982  
DIRECT FAX: 804.783.7680  
INTERNET: jpirko@leclairryan.com  
FILE NUMBER: 3111.097

February 7, 2003

*By Hand Delivery*

Mr. Joel H. Peck, Clerk  
State Corporation Commission  
Document Control Center  
1300 East Main Street  
1st Floor  
Richmond, Virginia 23219

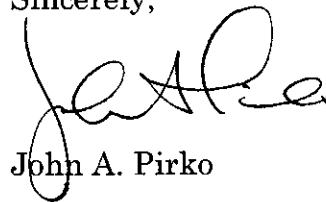
*Re: Ex Parte: In the matter concerning the provision of default  
service to retail customers under the provisions of the Virginia  
Electric Utility Restructuring Act  
Case No. PUE-2002-00645*

Dear Mr. Peck:

On behalf of the Virginia, Maryland and Delaware Association of Electric Cooperatives and its Virginia members, enclosed are an original and fifteen copies of the *Preliminary Comments of the Virginia Electric Cooperatives* in the above-referenced matter.

Thank you for your attention to this matter.

Sincerely,



John A. Pirko

JAP/stf  
Attachment  
cc: Virginia Cooperatives  
Robert A. Omberg  
Service List  
Arlen K. Bolstad, Esq.

**COMMONWEALTH OF VIRGINIA  
STATE CORPORATION COMMISSION  
at Richmond**

<b>COMMONWEALTH OF VIRGINIA</b>	)	
	)	
<b>At the relation of the</b>	)	
	)	
<b>STATE CORPORATION COMMISSION</b>	)	<b>Case No. PUE-2002-00645</b>
	)	
<i>Ex Parte</i> , In the matter concerning	)	
the provision of default service to retail	)	
customers under the provisions of the	)	
Virginia Electric Utility Restructuring Act	)	

**PRELIMINARY COMMENTS OF  
THE VIRGINIA ELECTRIC COOPERATIVES**

Pursuant to the Virginia State Corporation Commission's ("Commission") December 28, 2002, *Order Establishing Investigation*, A&N Electric Cooperative, BARC Electric Cooperative, Central Virginia Electric Cooperative, Community Electric Cooperative, Craig-Botetourt Electric Cooperative, Mecklenburg Electric Cooperative, Northern Neck Electric Cooperative, Northern Virginia Electric Cooperative, Prince George Electric Cooperative, Rappahannock Electric Cooperative, Shenandoah Valley Electric Cooperative and Southside Electric Cooperative, Inc., and the Virginia, Maryland & Delaware Association of Electric Cooperatives ("VMD Association"), (collectively, the "Cooperatives") hereby join in filing these *Comments of the Virginia Electric Cooperatives* in this proceeding.

## I. Introduction

On December 23, 2002, the Commission entered its aforementioned *Order Establishing Proceeding* that, *inter alia*, opened this docket in order to receive input from interested parties regarding its statutory obligation to determine the components of default service and to establish one or more programs to make such services available to retail customers effective January 1, 2004, pursuant to the Virginia Electric Utility Restructuring Act, §§ 56-576 *et seq.* of the Code of Virginia ("Code"), as amended (the "Restructuring Act" or the "Act"). By this order the Commission instructed its Staff to convene a work group of interested persons to help Staff identify and resolve issues related to the Commission's obligations under § 56-585 of the Code. Staff is to convene the first meeting of the work group on March 4, 2003.

Commission Staff is then to prepare a report including recommendations on determining the components of default service and establishing programs to make such services available to retail customers. In order to start the process and to begin framing issues for the work group discussions, the Commission requested initial comments from interested parties that are to include responses to thirteen questions posed by the Commission relative to default service. The following are the Virginia Cooperatives' responses to the Commission's thirteen questions, and other pertinent remarks.

## II. Discussion

### A. Statutory Background

Section 56-585 of the Restructuring Act addresses the provision of default service for retail customers once customer choice is available throughout the Commonwealth. Under the Act, the term "default service" is not defined in terms of services, but rather in terms of the *potential recipients* of the service. Thus, "default service" is service provided to retail customers who (i) do not affirmatively select a supplier; (ii) are unable to obtain service from an alternative supplier; or (iii) have contracted with an alternative supplier who fails to perform. Section 56-585 also makes several references to having the Commission designate a default service provider "to provide one or more components of such services, in one or more regions of the Commonwealth, to one or more classes of customers." These references are likely the root of several of the questions posed by the Commission in this proceeding. While no specific components of such service are described in the Act, at least two aspects of default service are evident: (i) default service is a service offered to retail customers (*i.e.*, ultimate consumers); and (ii) default service is available when other suppliers either are not providing or cannot provide service.

Another important aspect of § 56-585 (and of particular interest to the Cooperatives) is the differentiated treatment of distribution electric cooperatives under § 56-585.F with regard to default service. First and foremost, under subpart F, a distribution cooperative "shall have the *obligation and right* to be the supplier of default services in its certificated service territory" (emphasis added). While

another supplier may be designated as the default service provider to the customers of other incumbent utilities at some future time, under current law (subject to certain conditions and limitations) each of the Cooperatives will continue to be the default service provider in its service territory, regardless of market conditions. The rates for default service offered by a cooperative also are subject to different treatment. Under subsection F, a cooperative's rates for default service are to be based on its "prudently incurred costs," and subsections B and C of § 56-585 (addressing the designation of alternative default suppliers and rates for default service provided by a distributor) do not apply. However, if a cooperative elects or seeks to be a default provider of another electric utility, the default supplier in its service territory may be designated by the Commission under § 56-585.B.

In addition, § 56-585.F may provide some guidance in answering some of the questions asked by the Commission in this proceeding. For example, for a cooperative, the "geographic scope" regarding default service is clearly defined as relating to its "certificated service territory." Also, for purposes of subsection F, default services specifically include the supplying of electric energy and "all services made competitive pursuant to § 56-581.1" of the Act, *i.e.*, competitive retail electric billing and metering. The terms of the Act applying specifically to the Cooperatives may suggest how like terms should apply to other utilities.

Overall, the Cooperatives are treated differently under the Restructuring Act with regard to default service. The Cooperatives believe that consideration of the

provisions on default service relative to the Cooperatives may provide insight on the components and other aspects of default service for other electric utilities.

## B. The Thirteen Questions

### 1. *What should be the specific components of default service?*

Clearly, the provision of a "backstop" for retail electricity supply service is the central focus of default service. In addition, as mentioned in §56-585.F, competitive metering and billing could be regarded as components of default service and thus covered by or subject to the default service provisions. However, it would be difficult to envision a circumstance where any benefit would derive from "unbundling" default service into separate components, except perhaps when metering or billing services are provided by a competitive service provider ("CSP") different from the CSP supplying power (or when alternative suppliers are available for default services but not electricity supply service). In such a case, a customer could receive one service from a competitive supplier and another service from a default provider. Still, with regard to the Cooperatives, they will remain the default suppliers for any and all components of default service recognized in the course of this proceeding.

### 2. *Whether, given the virtual absence of competition in Virginia's retail generation market, incumbent electric utilities should continue to provide default service at capped rates at the present time; if so, what changes in statute, policy, infrastructure, market conditions, and/or other circumstances are necessary to allow for the practical provision of default service by an entity other than the incumbent?*

At the present time, incumbent electric utilities *must* continue to provide default service at capped rates, regardless of the status (virtual or real) of

competition in Virginia's retail generation market. The Restructuring Act does not include a provision permitting parts of it to be repealed, suspended or ignored based on the absence of retail competition.

The Restructuring Act (as amended) was a carefully crafted piece of compromise legislation based on lengthy and intricate study, discussion and negotiation. Identifying the changes that might be necessary to allow the "practical provision of default service" by alternative suppliers would be no easy or quick task. In addition, this would be a curious approach to problems plaguing competition in the retail sale of electricity. It hardly appears appropriate to attempt to solve the virtual absence of retail competition in Virginia by attempting to address perceived problems affecting the provision of baseline, backstop services. The notion of working to fix problems in the provision of potentially risky, safety-net default services prior to addressing the overall absence of competition in the retail electricity market (*i.e.*, working from the bottom up) is, to say the least, a novel approach.

The Cooperatives do not believe that changing the terms of default service is the best place to begin efforts to correct problems with retail competition. In addition, the balance of risks and rewards offered in the Act are intricate, and are interwoven throughout its text. In fairness, if revision of the default provisions of the Act is to be considered, the entire Act would have to be reviewed and reconsidered in order to assure that the overall balance previously achieved is preserved.

3. *What should be the geographic scope of a default service provider's territory, i.e. statewide, incumbent utility service territory, regions served by specific regional transmission entities; divisions with an incumbent utility's service territory; major metropolitan and surrounding areas, etc.?*

For the Cooperatives, the geographic scope of each cooperative's default service territory is controlled by the express terms of the Restructuring Act. Under §56-585.F, each cooperative is the supplier of default services in its certificated service territory. In addition, under § 56-585.B.3, the Commission may in certain circumstances require a distributor to serve as the default service provider, but not outside of the territory in which the distributor provides service. Continuing to administer default service based on incumbent utility service territories makes good sense, especially during the course of the transition to retail access.

Default service is intended to be a safety net. In some jurisdictions, the default provider is described as the "provider of last resort." If Virginia begins to assign "default service territories" that are different from the incumbent utility service territories, the chance that some customers or areas might slip through the net will increase.

Competition to provide default service in some specific, limited geographic areas is not likely to be a primary driver toward the advent of competition in Virginia's retail electricity market. In addition, unless there is change in the statute, the division of default service territories will continue to be along service territory lines for the Cooperatives. For now, default service should continue to be geographically divided along traditional service territory lines for all of Virginia. Alternative ways to re-divide the other incumbent utilities' default service

territories can and should be put off at least until the transition to retail access is complete and retail competition is fully established and under way.

4. *Whether default service, as contemplated by § 56-585 of the Act, should be limited to unregulated service, i.e. is it necessary to designate distribution service as a default service?*

No, it is not necessary to designate distribution service as a default service. Default service, as contemplated and described by § 56-585, is necessarily limited to otherwise unregulated, competitive services offered by other service providers. As discussed above, the definition of default service contemplates, in one way or another, the absence of another or alternative supplier of the service. Distribution services are not open to retail access or choice; there is not to be any alternative supplier or competition with regard to distribution service.

Default service is a retail electricity supply service issue, not a distribution issue. Under the proper conditions (for incumbent utilities other than the Cooperatives), default service could be provided by another supplier that competed for that responsibility. However, the same is not true for distribution service. There is no legal basis for displacing a distribution provider and replacing it with an alternative, competitive default distribution service provider; therefore, there is no reason to designate distribution service as a default service.

5. *For generation-related default service, whether the separate components of generation service to retail customers (capacity or resource reservation, energy, transmission and ancillary services) should be treated as separate default services or bundled into a single service?*

In the Cooperatives' view, while metering and billing could conceivably be offered as separate components of default service, support for the ultimate sale and

consumption of generation, *i.e.*, electricity supply service, is the vital component of default service. The question then is whether there are sub-components of retail generation service that should (or could) be offered as a default service.

The emphasis in default service is, as it should be, on the notion of providing a "safety net" or "backstop" or source of "last resort." Default service is not likely to provide an incentive for the creation of new categories of competitive service offerings. In the future, to the extent competitive markets for sub-components of retail generation service develop, offering those services on a default service basis could one day be of interest to competitive service providers. Again, however, the market for the component service should develop before it is considered or classified as a separate service that could be offered on a default basis, as opposed to identifying a component of default service and then waiting to see if a market for that service develops. For now, all of the components of generating service should remain bundled as one for default electricity supply service.

6. *For generation-related default service, whether the service should be delivered to the retail customer or to the incumbent utility?*

The Cooperatives are not clear on what distinction the Commission is making in describing "generation-related default service," but regardless of the meaning, it does not appear that the Restructuring Act contemplates anything other than generation-related services to the ultimate consumer, the retail customer, when it describes default service. Only a consumer who does not make a choice, is without choice or had its choice taken away is able and entitled to obtain default service. Generation generally is delivered to the ultimate consumer through the incumbent

distribution utility, but the exchange in a default service transaction clearly is between the default service provider and ultimate (retail) default customer.

7. *Whether the language of the statute prohibits the provision of default service to an incumbent utility on behalf of a group of customers, i.e. could a third party provide service to an incumbent utility for indirect service to retail customers (service to satisfy load growth, specific localities, or to customer subgroups)?*

This question is also somewhat confusing. The question appears to relate to a *competitive* offering rather than a default service offering. While it is easy to picture a service provider offering electricity supply service to supply a locality or a customer sub-group, or offering to meet a utility's load growth, it is difficult to conceptualize a service provider approaching an aggregated group or a municipality to make an offer to provide its *default service* requirements. In addition, if the service described is provided to the incumbent utility for resale to end-users rather than directly to the retail consumer, it would be a wholesale transaction, introducing additional jurisdictional issues. Such an offering also could create the need for multiple default service providers within a single service territory.

Nothing in the statute appears to explicitly forbid the provision of default service, at retail, for delivery to an incumbent utility on behalf of a group of retail customers. If a demand for such a service ever developed, the provision of that service does not appear to be expressly prohibited. However, the potential problems presented by such an offering may well outweigh the potential benefits.

8. *Whether the provision of default service should differ by customer class?*

As stated earlier herein, the Restructuring Act makes repeated reference to having the Commission designate a default service provider to provide such services "to one or more classes of customers." This leads to questions about whether default services need be differentiated by customer class.

As stated above, default service should be a base line, back-up service available to all eligible customers. While the terms and conditions of receiving default service may differ by customer class (due to the particular characteristics of each class), the provision of default service need not necessarily differ by customer class. Each customer should be able to obtain default service that is at least comparable to the service it is able to receive on a non-default service basis, or had previously received, but nothing appears to require that it should be different for different customer classes.

9. *Whether different components of default service can be provided by different suppliers?*

If a competitive market develops and providers are interested in offering (and competing for) different components of default service, there is no evident statutory bar to having various suppliers provide different services. Still, it should not be driven by regulation; the components should be identified and competition should develop through the functioning of the market. That being said, at this stage of the development of retail access, it appears highly unlikely that different suppliers would want to compete to provide various components of default service.

10. *Whether default service has the same meaning for different classes of customers, i.e., those who do not affirmatively select a supplier, those who are unable to obtain service from an alternative supplier, or those who have contracted with an alternative supplier who fails to perform?*

The term "default service" could have a somewhat different connotation for the third "class" or category of the eligible recipients of default service, those whose alternative supplier has failed them. Default service to that group is more like *replacement power* service, rather than simply a basic, available service. However, there does not appear to be any real reason for differentiating the meaning of default service among the three types of customers eligible for such service. In the end, default service is still a backstop service for the eligible customers.

11. *How should charges for default service be collected?*

Charges for default service should be collected in the normal course of business. Generally speaking, if a single entity is providing consolidated billing services for electricity supply and distribution services (in the Cooperatives' case, generally the Cooperatives) that entity also should provide the billing services for default customers. If there is separate billing, default service could be separately billed.

12. *Whether metering, billing and collecting services should be deemed components of default service?*

As stated earlier, in the case of electric cooperatives in Virginia, metering and billing services made competitive pursuant to §56-581.1 are to be included, along with electric energy supply, as default services. That being the case, it seems reasonable to identify metering and billing as either components of default service

or as separate default services across the board for all incumbent electric utilities. Collecting simply seems to be a sub-component of billing rather than a separate component of default service.

13. *What implications would the alternative provision of default service have for the determination of wires charges?*

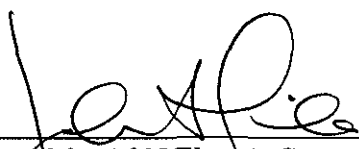
Under § 56-583 of the Restructuring Act, customers that are subject to and receiving default service prior to the expiration of the capped rate period "shall pay a wires charge ...." Wires charges are the excess, if any, of the incumbent electric utility's capped generation rate over the projected market prices for generation, as determined by the Commission. In the Cooperatives' view, the alternative provision of default service should have no implication with regard to the determination of wires charges.

### **III. Conclusion**

The Cooperatives respectfully offer these initial comments and responses to the Commission's questions relative to default service. The Cooperatives look forward to working with the Commission, Commission Staff, the Office of the Attorney General and other interested parties in the work group assembled to assist Staff in developing recommendations to the Commission regarding the components of default service and the establishment of programs to make default services available to eligible customers.

Respectfully submitted,

By: \_\_\_\_\_

  
Counsel for A&N Electric Cooperative,  
BARC Electric Cooperative,  
Central Virginia Electric Cooperative,  
Community Electric Cooperative,  
Craig-Botetourt Electric Cooperative,  
Mecklenburg Electric Cooperative,  
Northern Neck Electric Cooperative,  
Northern Virginia Electric Cooperative,  
Prince George Electric Cooperative,  
Rappahannock Electric Cooperative,  
Shenandoah Valley Electric Cooperative,  
Southside Electric Cooperative, Inc.  
and the  
Virginia, Maryland & Delaware Association of  
Electric Cooperatives

John A. Pirko  
LeClair Ryan, A Professional Corporation  
4201 Dominion Boulevard Suite 200  
Glen Allen, Virginia 23060  
(804) 968-2982  
(804) 783-7680  
[jpirko@leclairryan.com](mailto:jpirko@leclairryan.com)  
February 7, 2003

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Comments of the Virginia Electric Cooperatives* in Case No. PUE-2002-00645 was hand-delivered, electronically mailed or mailed, postage prepaid, this 7th day of February 2003 to the following parties on the service list for this proceeding:

Adam Chmara, Esquire  
PEPCO Energy Services  
1300 N. 17<sup>th</sup> Street, Suite 1600  
Arlington, VA 22209

Craig G. Goodman, President  
National Energy Marketers Association  
333 K Street NW, Suite 425  
Washington, DC 20007

Michel A. King, President  
Old Mill Power Company  
103 Shale Place  
Charlottesville, VA 22902

Kathleen Magruder  
Vice President  
The New Power Company  
1 Manhattanville Road  
Purchase, New York 10577-2100

Donald R. Hayes, Esquire  
Washington Gas Light Company  
1100 H Street, N.W.  
Washington, D.C. 20080

Chris King  
American Energy Institute  
842 Oxford Street  
Berkeley, CA 94707

Dale P. Moore  
Roanoke Gas Company  
519 Kimball Avenue N.E.  
Roanoke, VA 24030

D. R. Beam, Manager  
Old Dominion Electric Cooperative  
4201 Dominion Blvd, 3<sup>rd</sup> Floor  
Glen Allen, VA 23060

Irene Leech  
Virginia Citizens Consumer Council  
4220 N. Fork Road  
Elliston, VA 24087

Martha Duggan  
Reliant Energy Wholesale Group  
3102 N. Sixth Street  
Arlington, VA 22201

Brian R. Greene, Esquire  
Christian & Barton, LLP  
909 E. Main Street, Suite 1200  
Richmond, VA 23219

George C. Roberts  
Director Regulatory Relations  
SchlumbergerSema NA  
30000 Mill Creek Avenue, Suite 100  
Alpharetta, GA 30022

Harry A. Warren, Jr., President  
Washington Gas Energy Services  
950 Herndon Parkway, Suite 280  
Herndon, VA 21070

Michael Swider  
Manager, Regulatory Affairs  
Strategic Energy, LLC  
2820 Charles Dunn Drive  
Vienna, VA 22180

Debra M. Whitner  
Senior Regulatory Analyst  
LG&E Energy Corp.  
220 W. Main Street  
Floor 5  
Louisville, KY 40202

Linda S. Portasik, Esquire  
Kentucky Utilities Company  
220 W. Main Street  
Floor 11  
Louisville, KY 40202

Ransom Owan, Ph. D., Director  
Regulatory & External Affairs  
Washington Gas Energy Services  
13865 Sunrise Valley Drive, Suite 200  
Herndon, VA 21071-3401

MaryEllen O'Neill, Esquire  
Washington Gas Energy Services  
1100 H Street NW  
Washington, DC 20080

Gary Cohen  
Special Project Manager  
Conectiv Power Delivery  
P.O. Box 9239  
Newark, DE 19714-9239

August Wallmeyer  
700 E. Franklin Street, Suite 701  
Richmond, VA 23219

Gary A. Jeffries, Esquire  
Dominion Resources Services, Inc.  
One Chatham Center, Suite 700  
Pittsburgh, PA 15219

Mark G. Thessin  
United Cities Gas Company  
810 Crescent Center Drive  
Suite 600  
Franklin, TN 37067-6226

Telemac N. Chryssikos, Esquire  
Washington Gas Energy Services  
1100 H Street, N.W.  
Washington, DC 20080

William R. Moore, Jr.  
Manager, Regulatory Issues  
Conectiv Power Delivery  
P.O. Box 9239  
Newark, DE 19714-9239

Irene Prezeli  
Strategy & Planning  
FirstEnergy Solutions  
395 Ghent Road, Suite 407  
Akron, OH 44333

Randall V. Griffin, Esquire  
Conectiv Power Delivery  
P.O. Box 232  
Wilmington, DE 19899

Matthew Picardi  
General Manager – Regulatory Affairs  
Shell Trading  
27 Winthrop Road  
Hingham, MA 02043

Thomas B. Nicholson, Esquire  
Williams Mullen Clark Dobbins  
P.O. Box 1320  
Richmond, VA 23218-1320

Christy McCormick, Esquire  
Office of the Attorney General  
900 E. Main Street  
Floor 2  
Richmond, VA 23219

Jack Greenhalgh  
New Era Energy, Inc.  
1340-1272 N. Great Neck Rd.  
Suite 103  
Virginia Beach, VA 23452-2230

Philip J. Bray  
The Potomac Edison Company d/b/a  
Allegheny Power  
10435 Downsview Pike  
Hagerstown, MD 21740-1766

Guy T. Tripp, III  
Hunton & Williams  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, VA 23219-4074

James S. Copenhaver, Esquire  
Columbia Gas of Virginia, Inc.  
9001 Arboretum Parkway  
Richmond, VA 23235

Robert A. Omberg, Esquire  
VP Government Affairs  
VA MD & DE Association of  
Electric Cooperatives  
4201 Dominion Blvd, Suite 101  
Glen Allen, VA

Deborah J. Henry, Esquire  
Allegheny Energy Service Corp.  
800 Cabin Hill Drive  
Greensburg, PA 15601

Edward L. Petrini, Esquire  
Christian & Barton  
1200 Building, Suite 1200  
909 E. Main Street  
Richmond, VA 23219-3095

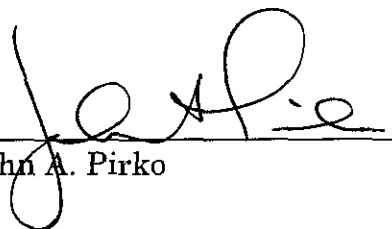
Carolyn L. Conrad, Esquire  
Allegheny Energy Supply Co. LLC  
4350 Northern Pike  
Monroeville, PA 15146

Karen Bell, Esquire  
Virginia Electric and Power Company  
120 Tredegar Street  
P.O. Box 26532  
Richmond, VA 23261

Anthony J. Gambardella, Esquire  
Woods Rogers  
823 East Main Street  
Suite 1200  
Richmond, VA 23219

Howard W. Dobbins, Esquire  
Williams Mullen Clark & Dobbins  
P.O. Box 1320  
Richmond, VA 23218-1320

R. L. Terpenney  
Manager  
Town of Christiansburg  
100 E. Main Street  
Christiansburg, VA 24073



---

John A. Pirko